

Applicants : Bryan T. Baker et al
Serial No. : 10/047,300
Page No. : 6

REMARKS

Applicants respectfully request reconsideration of the application identified above. Claims 1-11 and added claims 35-37 are pending. Claims 1-8 are amended. Claims 12-34 are cancelled. Applicants respectfully traverse the rejections as conceivably applied to the amended and new claims.

I. Summary of the Invention

The invention as defined in amended independent claim 1 and new independent claim 35 is directed to a resealable container closure construction. A base label is secured to the wall so that a portion of the base label is covered, and another portion is uncovered. A cover label (also including a covered portion and an uncovered portion) is secured in the base label. In amended independent claim 1, a tamper-indicating tear strip is joined with the uncovered portion of the first ply, and located below the closure flap. In new independent claim 35, the tear strip is joined with the uncovered portion of the second ply, below the closure flap. This construction enables a user to tear open the container without having to pull the tear strip through the closure flap--which usually is constructed from a tough, tear resistant material.

The invention as defined in amended independent claim 8 is directed to a container closure label construction that includes a touch-fastening system disposed at least partially between a cover label and base label. The base label includes its own adhesive so the construction is quickly and easily applied to a container to provide a simple, easy-open and resealable closure.

Applicants : Bryan T. Baker et al
Serial No. : 10/047,300
Page No. : 7

II. Previous Election

Applicants note with appreciation Examiner Ahmad's examination of all the species of the embodiments shown in Figs. 1-18, and claimed in claims 1-11, in view of Applicants' previous Response.

III. Art Rejections Based on U.S. Patents 4,955,891 and 4,824,261 to Provost

As originally presented, claims 1-2, 4 and 8-11 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patents 4,955,981 or 4,824,261 to Provost (collectively, "Provost"). Additionally, claims 1-11, as originally presented, were rejected under 35 U.S.C. §103(a) as being unpatentable over Provost.

Provost discloses a tamper-proof, re-sealable bag. With reference to the embodiments shown in Figs. 7 and 12, the Provost bag includes a front wall 48, a rear wall 50 and a flap 58 that folds over the front wall 48. Hook-and-loop fasteners are secured to the bag either between (a) the exterior of the front wall 48 and the interior of the flap 58 (Fig. 7) or (b) the interior of the front wall 48 and the interior of the rear wall 50 (Fig. 12). In both embodiments, an adhesive 60 is disposed on the bag exterior to permanently secure the flap 54 to the front wall 48. None of the walls or closure flaps of Provost are base *labels* or cover *labels*--let alone base labels or cover labels secured between a front wall and a closure flap of a container. A tear strip 64 is secured between the exterior of the front wall 48 of the bag 96 and the closure flap 58 so that when the tear strip 64 is removed, it damages the closure flap 58 to evidence tampering or opening of the bag (Fig. 12; Col. 4, Lns. 1-9). The front 48 and rear 50 walls of the Provost bag are secured together--at most--by the touch fastening system 70 so that the front and rear walls may be separated to open the bag without damaging it (Figs. 7, 12).

Applicants : Bryan T. Baker et al
Serial No. : 10/047,300
Page No. : 8

Applicants respectfully submit that Provost does not anticipate or render obvious the subject matter of the amended and new claims. With regard to amended independent claim 1 and new independent claim 35, Provost does not disclose, teach or suggest (1) a first ply adhered to the wall; (2) a first ply including covered and uncovered portions secured to closure flap-overlapped and closure flap-non-overlapped portions of the wall, respectively; (3) a second ply, also including an uncovered portion, secured to the uncovered portion of the first ply; or (4) a tear strip joined with the uncovered portion of the first ply (claim 1) or second ply (claim 35) in a position *below* the closure flap, which when removed releases at least a portion of the closure flap without damaging it.

Applicants further respectfully submit that there is no motivation in Provost--other than in hindsight of the present invention--to incorporate into the Provost bag any of the above features of the amended and new claims. The motivation to make the Applicants' claimed invention *and* a reasonable expectation of success must *both* be found in the prior art, not in hindsight of the Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 220 U.S.P.Q.2d 1483 (Fed. Cir. 1991); M.P.E.P. §2143. Here, Provost's objective is to damage the flap to open the bag--there is no motivation not to damage the flap. Moreover, Provost necessarily positions *all* components of his system *between* the closure flap and the wall--nothing is positioned below the closure flap.

Furthermore, regarding amended independent claim 8, Provost fails to disclose, teach or suggest a closure apparatus including: (1) a base label having a first and a second side; (2) a touch fastening system secured to the first side with a first adhesive; (3) a second adhesive secured to the second side opposite the fastening system; (4) a cover label including a third side

Applicants : Bryan T. Baker et al
Serial No. : 10/047,300
Page No. : 9

and a fourth side, and adhered to the touch fastening system and first side with a third adhesive; or (5) a fourth side of the cover label adhered to the first side with the second adhesive. Instead, the front wall 48, the rear wall 50, and the closure 58 of the Provost bag have the touch fastening system and tear cord adhered directly to them--none of these bag components are "labels" in any regard. Furthermore, if the closure construction of amended claim 8 was hypothetically incorporated into Provost, then the front 48 and rear 50 walls necessarily would be adhered directly to one another. There is no motivation for such a construction because it would render Provost inoperable by permanently adhering the bag closed. Accordingly, a user would need to tear open the Provost bag along the line of adhesion. This in turn would render the touch fastening system entirely superfluous. Moreover, the hypothetical construction is not a "more re-arrangement of parts" because it would defeat the purpose in Provost of providing an easy open, re-sealable bag.

Therefore, the Applicants respectfully submit that Provost does not anticipate or render obvious the inventions as defined in amended independent claims 1 and 8 or new claim 35.

Claims 2-7, 9-11, and new claims 36-37 depend from amended claims 1 and 8, and new claim 35, respectively, and are therefore allowable at least for the reasons noted above. Additionally, these claims recite further patentable subject matter. Amended dependent claim 2 recites a first ply including a first side, a second side and a tear strip secured to the first side. Amended dependent claim 3 recites that the tear strip is secured to the second side. Amended dependent claims 4 and 5 recites an integral perforated zipper strip. Amended dependent claims 6 and 7 recite that the tear strip is adjacent the pair of strips and an information field is adjacent

Applicants : Bryan T. Baker et al
Serial No. : 10/047,300
Page No. : 10

the tear strip, respectively. Dependent claim 9 recites that the tear strip is sandwiched between the base label and the cover label. Dependent claim 10 recites that perforations or tear lines are adjacent the touch fastening system and claim 11 recites that the tear strip is exposed on the base label opposite the touch fastening system. New dependent claim 36 recites that the tear strip is integral with the second ply, and new claim 37 recites that the tear strip is adhered to the second ply.

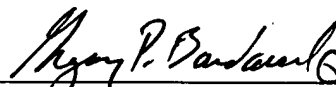
CONCLUSION

In view of the above amendments and these remarks, Applicants respectfully submit that the present application is in condition for allowance. A notice to that effect is earnestly and respectfully requested.

Respectfully submitted,

BRYAN T. BAKER ET AL

By: Warner Norcross & Judd LLP



Gregory P. Bondarenko
Registration No. 44,547
900 Fifth Third Center
111 Lyon Street, N. W.
Grand Rapids, MI 49503-2487
(616) 752-2420

18537.75054-001
859773-7